

Calhoun
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Design-A-Sign, Incorporated

File: B-244209.2

Date: August 9, 1991

John W. DeCamp, Esq., for the protester.
Mark Chalpin, Department of Veterans Affairs, for the agency.
Tania L. Calhoun, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

A bid which was not accompanied by a bid sample required by the solicitation was properly rejected as nonresponsive.

DECISION

Design-A-Sign, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. M1-120-91, issued by the Department of Veterans Affairs, for the procurement of 420,000 flags. The bid was rejected as nonresponsive because Design-A-Sign failed to submit a required bid sample.

We dismiss the protest.

Bids were opened on May 29, 1991. Design-A-Sign submitted a bid of \$26.24 per flag, but did not provide a bid sample. The IFB expressly required all bidders to submit a sample of the flag they would provide under the contract.

By letter dated July 24, Design-A-Sign was notified that its bid was rejected as nonresponsive due to its failure to include the required bid sample. The contract was awarded to Valley Forge Flag Co., which had submitted a bid of \$27.76 per flag.

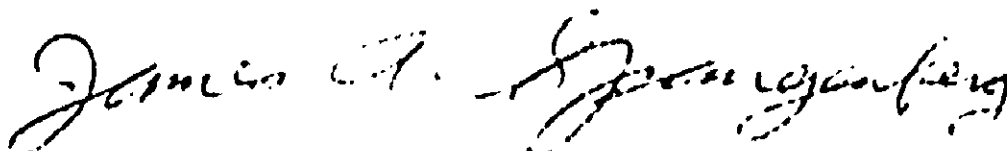
A bid is responsive when it offers to perform without exception the exact service or item called for in the solicitation so that upon acceptance the contractor will be bound to perform in accordance with all the invitation's terms and conditions. Loral Packaging, Inc., B-221341, Apr. 8, 1986, 86-1 CPD ¶ 347. Where the solicitation specifically states that a bid sample must be submitted by the time of bid opening, the failure to do so generally is a material deviation from the solicitation's requirements, which renders the bid nonresponsive. Id.

Here, the solicitation required each bidder to submit one bid sample of the flag it would provide pursuant to award of the contract. The sample flag was to conform to specific criteria, such as stitch design and size, and to represent the quality of the work to be delivered under the contract. The IFB provided that the failure to furnish samples by bid opening would require rejection of the bid.

Design-A-Sign concedes that it failed to comply with this requirement, but contends that since it intends to submit a first article, it did not need to submit a bid sample. The protester's reliance on the first article approval clause is misplaced.^{1/} The first article requirement refers to the government's post-award right to test the vendor's product to ensure that it in fact complies with the specifications before the contractor is authorized to proceed to production. The bid sample requirement is used to determine whether the bidder has offered to furnish a product that complies with the specifications, and therefore has submitted a responsive bid. Cf., ATS Cases, Inc., B-235690, Sept. 1, 1989, 89-2 CPD ¶ 210 (provision for first article does not negate requirement for requested descriptive literature). Responsiveness must be determined from the bid and material available at bid opening. Lynch Mach. Co., Inc., B-228689, Sept. 24, 1987, 87-2 CPD ¶ 297. A bidder may not be permitted, after bid opening, to make its nonresponsive bid responsive. Id. Since Design-A-Sign concededly failed to provide a bid sample, the agency properly rejected its bid as nonresponsive.

Design-A-Sign also alleges that the contracting officer has a policy to ensure award of flag contracts to Valley Forge. However, Design-A-Sign's bid was nonresponsive, and Valley Forge's bid was apparently responsive. Thus, Design-A-Sign's unsupported allegations of a preference for Valley Forge will not be considered.

Accordingly, the protest is dismissed.



James A. Spangenberg
Assistant General Counsel

^{1/} To the extent that the protester contends the IFB should not have contained the bid sample requirement because there was provision for first article approval, this contention is untimely under our Bid Protest Regulations, since it was not protested prior to bid opening. 4 C.F.R. § 21.2(a)(1).